

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.3818 of 2013

Date of decision: 05.08.2015

Shyam Sunder

....Petitioner

Vs.

Commissioner, Ambala Division, Ambala and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH.**

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. D. Khanna, Addl. Advocate General, Haryana

Mr. A.K. Singh Goyat, Advocate
for respondents No.5,6,10 to 12.

Mr. Raman Sharma, Advocate
for respondent No.17.

Rajive Bhalla, J (Oral)

The petitioner prays for issuance of a writ of certiorari, quashing order dated 11.09.2012, passed by the Commissioner, Ambala Division, Ambala.

Counsel for the petitioner submits that the Director, Consolidation, Haryana, exercising powers under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter to be referred to as “the Consolidation Act”) had vide order dated 20.10.1997, decided that the petitioner is entitled to a parcel of land from the “beshi abadi” (extended abadi) of the village. The Commissioner, Ambala Division, Amabala, exercising the same powers, has by the impugned order, held that the petitioner is not entitled to allotment of land in the “beshi abadi” of the village. Counsel for the petitioner submits that as the Commissioner was considering challenge to an

order passed by the Consolidation Officer, refusing to implement, order dated 20.10.1997, he had no jurisdiction to re-open the entire controversy and hold that the petitioner is not entitled to allotment, in the absence of any power of review conferred by the Consolidation Act.

Counsel for the private respondents submit that as the private respondents are bona fide vendees from Mamu and others, the petitioner cannot be allotted land from the land that they have purchased. It is for this reason that the Commissioner re-examined the entire matter and held that the petitioner is not entitled to allotment of a plot. Counsel for the private respondents further submit that if the matter is to be remitted, the Commissioner may be directed to protect the land purchased by the answering respondents and allot the land to the petitioner from the remaining land belonging to Mamu etc.

We have heard counsel for the parties and perused the impugned order.

The Director, Consolidation, Haryana, exercising powers under Section 42 of the Consolidation Act, vide order dated 20.10.1997 held as follows:-

“As far as, the demand of extension of habitation is concerned, it seems proper. The delay which occurred in filing this case, while condoning the same, this case is remanded to Consolidation Officer, Hisar with the direction that as per his share according to his previous record, the residential plot issued in Khasra No.7441, the land measuring 2 bighas-19 biswas, extension in habitation may be given to him according to the consolidation scheme and it may be tried that the land be given to the applicant near the same field. After hearing the concerned parties and inspecting the record, the decision may be taken. The decision may be

taken within 2 months.”

A perusal of the aforesaid extract reveals that the petitioner's prayer for allotment of land from the extended abadi (beshi abadi) was accepted, the Consolidation Officer, Hisar was directed to examine the record and allot a residential plot as per the share-holding of the petitioner. The Consolidation Officer, instead of implementing, order dated 20.10.1997, passed by the Director, Consolidation, proceeded vide order dated 20.02.2007 to re-examine the matter on merits and held that the petitioner is not entitled to allotment of land from the extended abadi.

Aggrieved by this order, the petitioner filed an appeal before the Assistant Settlement Officer, Bhiwani. The Assistant Settlement Officer, Bhiwani, vide order dated 15.06.2007, allowed the appeal and directed the Consolidation Officer to comply with order dated 20.12.1997 (though it is order dated 20.10.1997). The private respondents filed an appeal before the Assistant Director, Consolidation, which was allowed by setting aside the order passed by the Settlement Officer and restoring the order dated 20.02.2007, passed by the Consolidation Officer, Hisar. The petitioner filed a petition under Section 42 of the Consolidation Act, before the Additional Director Consolidation, who instead of examining whether the Consolidation Officer had complied with order dated 20.10.1997, re-opened the entire matter and held that the petitioner is not entitled to any plot from the “beshi abadi”.

The petitioner approached this Court by filing CWP No.10465 of 2009. After holding that the order passed by the Director, Consolidation, Haryana, is non-speaking, the writ petition was allowed and the Director

Consolidation was directed to decide the petition filed by the petitioner afresh and in accordance with law. In the meanwhile, as power under Section 42 of the Consolidation Act was conferred upon the Commissioner, the Commissioner reconsidered the matter and instead of confining himself to the question whether order dated 20.10.1997 has been complied with, sought a report from the Assistant Director, Consolidation, and thereafter held that the petitioner is not entitled to allotment. The order passed by the Additional Director, Consolidation ignoring that the Director, Consolidation, Haryana, had already vide order dated 20.10.1997, while exercising power under Section 42 of the Consolidation Act, held that the petitioner is entitled to a plot, re-opened the controversy and held to the contrary. The Commissioner, Ambala Division, Ambala, a successor to the Director Consolidation, Haryana, was exercising coordinate powers under Section 42 of the Consolidation Act. The Consolidation Act does not confer the power of review upon officers, exercising power under this Act. The re-opening of the controversy or passing an order contrary to order dated 20.10.1997 was impermissible in law for want of the power of review. Reliance in this regard is placed upon a Full Bench judgment of this Court in **Deep Chand and another Vs. Additional Director Consolidation of Holdings**, 1964 PLR 318.

Consequently, we have no hesitation in holding that order dated 11.09.2012, passed by the Commissioner, Ambala Division, Ambala, is without jurisdiction. The writ petition is allowed, the impugned order is set aside but the matter is remitted to the Commissioner, Ambala Division, Ambala, to consider whether order dated 20.10.1997 passed by the

Director Consolidation, has been implemented and if not so in what manner and to what extent, it can be implemented.

The Commissioner shall also consider the contentions of the private respondents regarding bona fide purchase etc. in accordance with law.

Parties are directed to appear before the Commissioner, Ambala Division, Ambala on 08.09.2015.

(Rajive Bhalla)
Judge

August 05, 2015
vcgarg

(Amol Rattan Singh)
Judge